IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

Bail Appl..No. 5662 of 2007()

CRIME NO.105/98 OF CHAVARA THEKKUMBHAGAM POLICE STATION

: PETITIONER/ACCUSED:

BADARUDEEN, AGED 43 YEARS,
S/O. YUNUSKUTTY, KANNAKATHKIZHAKKETHIL HOUSE,
THEVALAKKARA VILLAGE, PADINJATTINKARA MURI.

BY ADV. SRI.SIRAJ KAROLY

RESPONDENTS: COMPLAINANT:

THE STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5662 of 2007

Dated this the 19th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner is the 1st accused in a crime registered under Section 498 A I.P.C. Investigation is complete. Final report was filed. The case was registered as C.C.No.165 of 1999. The petitioner was not available for trial. The co-accused were tried and acquitted. The case against the petitioner has been split up. The same is pending as C.C.No.52/2005, it is submitted. Consequent to non appearance of the petitioner, warrants of arrest have been issued against the petitioner. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence earlier was not wilful. He was very seriously ill. He was suffering from Cancer. He has now come to India. He is willing to surrender before the learned Magistrate and seek regular bail. The petitioner apprehends that his application for regular may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He, in these circumstances, prays that appropriate directions may be issued under Section 438 and/or 482 Cr.P.C.

3. The application is opposed. The learned Public Prosecutor submits that the petitioner must resort to the ordinary and normal course of surrendering before the learned Magistrate. He must then seek regular bail.

4. I find merit in the opposition by the learned Public Prosecutor. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

6. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself. The petitioner can certainly urge the details of his illness before the learned Magistrate while claiming bail under Section 437 Cr.P.C.

Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-